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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 364

KEIFER AND KEIFER, A CO-PARTNERSHIP, COMPOSED OF J. WARREN KEIFER, JR., AND OSWIN KEIFER, PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION AND REGIONAL AGRICULTURAL CREDIT CORPORATION OF SIOUX CITY, IOWA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT, REGIONAL AGRICULTURAL CREDIT CORPORATION OF SIOUX CITY, IOWA

OPINIONS BELOW

The opinion of the United States District Court for the District of Nebraska, Omaha Division (R. 35), is reported in 22 F. Supp. 918. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. 42–48) is reported in 97 F. (2d) 812.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Eighth Circuit was entered on July 8, 1938 (R. 49). A petition for rehearing was denied on August 9, 1938 (R. 57). The petition for a writ of certiorari was filed on September 20, 1938, and was granted on October 24, 1938, limited to the first question presented in the petition (R. 59). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

By the terms of the writ of certiorari, the only question presented is whether a regional agricultural credit corporation created by the Reconstruction Finance Corporation is subject to suit in tort.

STATUTES, EXECUTIVE ORDER, AND REGULATIONS INVOLVED

The applicable portions of the statutes, executive order, and regulations involved are set forth in the Appendix, *infra*, pp. 25–56.

STATEMENT

The petitioner and its four assignors will be referred to herein as "petitioner," the Reconstruction Finance Corporation as the "R. F. C.," and the Regional Agricultural Credit Corporation of Sioux City, Iowa, as "Regional."

By section 201 (e) of the Emergency Relief and Construction Act of 1932, c. 520, 47 Stat. 709, 713, approved July 21, 1932, *infra*, p. 25, the R. F. C.

was authorized to create regional agricultural credit corporations in any of the twelve Federal land-bank districts. By this section they were authorized and empowered to make loans or advances to farmers and stockmen at fair interest or discount rates, the proceeds to be used by the recipients for agricultural purposes or in the raising and marketing of live stock. Each regional was to have a paid-up capital of not less than $3,000,000, to be subscribed for by the R. F. C. from the unexpended balance of funds theretofore allocated by Congress to the Secretary of Agriculture. They were to be managed by officers and agents appointed by the R. F. C. under such rules and regulations as its board of directors might prescribe. They could rediscount any eligible paper they acquired with the R. F. C., the Federal Reserve banks, and the Federal intermediate credit banks. The R. F. C. was to supervise and pay all expenses incurred in their operation under such rules and regulations as the R. F. C.'s board of directors might prescribe.

Under and pursuant to that statutory provision, on September 10, 1932, the R. F. C. created and granted a charter to respondent Regional, empowering it to act in the States of Iowa, Nebraska, South Dakota, and Wyoming, comprising Federal Land Bank District Number Eight (R. 11–12). Its charter authorized and empowered it "to do and perform all acts and transact all business which, by implication or otherwise, is permitted legally to be done, performed and transacted by a regional agricultural credit corporation, under and in accordance

with the act of Congress, approved July 21, 1932, known as the 'Emergency Relief and Construction Act of 1932,' and to do all other things incidental thereto, and necessary or appropriate in connection therewith, within the States of Iowa, Nebraska, South Dakota, and Wyoming, and within such other state or states, or parts thereof, as the Reconstruction Finance Corporation, acting by and through its Board of Directors, may at any time and from time to time prescribe or permit" (R. 12).

After the creation of the Regional, but over a year and a half before any of the acts complained of in this case, the functions of the R. F. C. relating to the management of the regionals were transferred to the jurisdiction and control of the Farm Credit Administration by Executive Order of the President No. 6084, dated March 27, 1933, issued pursuant to sections 401 and 403 of the Act approved June 30, 1932, c. 314, 47 Stat. 382, 413, as amended by section 16 of the Act approved March 3, 1933, c. 212, 47 Stat. 1489, 1517. By section 407 of the Act of 1932, as amended by the Act of 1933, and by its terms, the Executive Order was effective as of May 27, 1933.

The petitioner's petition, or complaint (R. 1–13), and supplemental petition (R. 25–33), filed in the District Court for the District of Nebraska, Omaha Division, alleges as to the first cause of action that on or about October 21, 1934, the petitioner delivered to Regional 388 head of cattle, that Regional agreed to winter said livestock and return it to petitioner in the spring in good condition, that Regional by false and fraudulent representations and

coercion induced petitioner to enter into a contract waiving damages, that through Regional's negligent conduct in care of the livestock it was injured and the petitioner was damaged (R. 2–6). Similar allegations are made with respect to four other causes of action for different lots of livestock (R. 6–11).

The written "Cattle Feeding Contract" (R. 32–33), dated November 3, 1934, with respect to the first cause of action, states that the petitioner had given Regional a chattel mortgage dated September 30, 1933, on the 388 head of cattle; that the petitioner was unable to provide sufficient feed and water for its livestock; that it was agreed that Regional might take possession of the livestock described in the chattel mortgage; that it was agreed that Regional would furnish feed and care to the livestock until May 1, 1935, at which time, provided that all the terms and conditions of the contract and of the chattel mortgage had been complied with, the petitioner agreed to remove the livestock.

It was further agreed (R. 33):

> Inasmuch as this service is undertaken by the corporation [Regional] as an emergency relief measure in an effort to preserve the said live stock for the benefit of the mortgagor, it is agreed that all loss to said live stock from death, injury, disappearance, or any other cause shall be borne by the mortgagor.

Pursuant to the agreement, Regional wintered the cattle on a ranch near Whitman, Nebraska (R. 3).

On December 14, 1936, the petitioner instituted this action and filed its petition in the District Court of the United States for the District of Nebraska, Omaha Division, against the R. F. C. and Regional (R. 1), alleging that the petitioner's cattle were negligently kept during the winter of 1934–1935, and that the petitioner was damaged thereby (R. 3–11). Regional demurred (R. 33–34) to the petition and supplemental petition on the ground, among others, that the court had no jurisdiction of the person of the Regional or the subject of the action (R. 34). The R. F. C. demurred (R. 34–35) on the ground, among others, that the court had no jurisdiction of the subject matter of the action (R. 34).

The District Court sustained the demurrers and dismissed the case (R. 36). The court below affirmed on the grounds that the R. F. C. could not be held liable because control of Regional had been transferred from the R. F. C. to the Farm Credit Administration before the acts complained of and that Regional is a governmental agency which is immune from suit (R. 42–48).

The petition for certiorari sought review not only of the question whether Regional is suable in tort but also the question whether R. F. C. is liable in this case. Regional did not oppose certiorari on the first question in view of the conflict with *Casper* v. *Regional Agricultural Credit Corporation*, 278 N. W. 896 (Supreme Court of Minnesota). The order granting certiorari limited review "to the first question presented in the petition" (R. 59).

SUMMARY OF ARGUMENT

I. Instrumentalities of the Federal Government, of which Regional is one, are immune from suit unless Congress has unmistakably and expressly subjected them to suit.

A. Congress has not expressly subjected Regional to suit. The fact that Congress has expressly subjected other governmental corporate instrumentalities to suit when that result was intended strongly supports the view that Congress did not intend Regionals to be subject to suit.

B. Congress has not impliedly subjected Regional to suit. The fact that R. F. C. is subject to suit does not make Regional subject to suit. The fact that Regional was formed as a corporation does not subject it to suit because the controlling factor is the governmental purpose to be accomplished by Regional—not its corporate form. The activities of Regional are governmental in character and do not support an inference that Congress intended it to be subject to suit.

II. In any event Regional is not subject to this suit in tort. Even if Regional were subject to suit the statutory waiver of immunity would not extend to unauthorized tortious acts of its agents or employees.

ARGUMENT

Regional agricultural credit corporations are instrumentalities of the Federal Government engaged in performing important public functions,

with funds supplied wholly by the Governm
within that part of the Federal banking and cr
system which is conducted by the Farm Credit
ministration.[1] They have the attributes comm
found in all agencies of the Federal Governm
such as use of the standard form of oath requi
of all officers and employees of the Federal G
ernment,[2] the postal franking privilege,[3] the G
ernment rate for telegrams,[4] non-liability, as
strumentalities of the United States, for Fede
capital stock taxes,[5] for Federal stamp taxes,[6]
clerks' and marshals' fees in Federal courts,[7] a
for state and local taxes.[8] Frauds upon a regio
corporation are offenses against the United State

The regionals deposited their funds in the Fe
eral Reserve Bank of the district in which
particular regional was located, and the Ba
transmitted the funds to the Treasurer of t

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[1] Report of the Farm Credit Administration, 1934, pp. 5
64; Agricultural Adjustment in 1934 (Annual Report, Agr
cultural Adjustment Administration, U. S. Department
Agriculture), pp. 17–20, 30.

[2] Regional Agricultural Credit Corporations (R. A. C. C.
Bullettin No. 7, *infra*, p. 31.

[3] R. A. C. C. Bulletin No. 10, *infra*, p. 33.

[4] R. A. C. C. Bulletin No. 5, *infra*, p. 31; see *Emergenc*
Fleet Corp. v. *Western Union*, 275 U. S. 415.

[5] R. A. C. C. Bulletin No. 200, *infra*, p. 34.

[6] R. A. C. C. Bulletin No. 321, *infra*, p. 41.

[7] R. A. C. C. Bulletin No. 282, *infra*, p. 37.

[8] R. A. C. C. Bulletin No. 279, *infra*, p. 45.

[9] Act of June 16, 1933, c. 98, Sec. 64 (a), 48 Stat. 267, a
amended (U. S. C., Title 12, Sec. 1138d).

United States to be held, together with the capital funds of the regionals, in the Treasury of the United States. Money loaned by the regionals, or expenditures made by them, were paid by checks and vouchers drawn on the Treasurer of the United States in the form authorized and approved by the Treasury Department. Upon the reduction of their capital the regionals were directed by the Farm Credit Administration to deposit the funds representing such reduction of capital with the Treasurer of the United States to the credit of the Revolving Fund provided for in Section 84 of the Farm Credit Act of 1933, c. 98, 48 Stat. 257, 273. When it appeared that certain capital funds of the regionals were not needed for their operation, they were covered back into the Treasury of the United States, where they were available to be used again as part of the capital of other regionals, or for such other purposes as Congress might by statute subsequently direct.[10]

In the present case the "Cattle Feeding Contract" (R. 32–33) expressly recognized that the care of petitioner's cattle, for which petitioner could not supply sufficient feed and water and upon which Regional held a chattel mortgage, was undertaken by Regional "as an emergency relief measure * * *."

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[10] R. A. C. C. Bulletins No. 8 (pp. 8, 9) and No. 51, *infra*, pp. 45, 48.

The petitioner asserts that Regional may be sued in tort for damages arising out of injury to the cattle while in Regional's custody under the contract. The respondent Regional submits that (I) Congress has not subjected it to suit, and (II) in any event Congress has not subjected it to suit in tort.

I

CONGRESS HAS NOT SUBJECTED REGIONALS TO SUIT

Instrumentalities of the Federal Government, of which Regional unquestionably is one, are immune from suit, as well as the United States itself (*Lynch* v. *United States*, 292 U. S. 571, 582; cf. *Kawananakoa* v. *Polyblank*, 205 U. S. 349, 353), unless by statute Congress has subjected them to suit. *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231; *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, 559; *The Lake Monroe*, 250 U. S. 246, 249; cf. *The Western Maid*, 257 U. S. 419, 433. There is no distinction between suits against the Government and suits against the property of the United States. *Stanley* v. *Schwalby*, 147 U. S. 508, 512; *Carr* v. *United States*, 98 U. S. 433. Until consent was given by the Act of March 4, 1931 (46 Stat. 1528), it was impossible for a private mortgagee to obtain an adjudication touching upon any mortgage or other lien claimed by the United States upon real estate. It is a settled rule, repeatedly stated by this Court, that "The sovereignty of the United States raises a presumption against its suability, unless it is clearly shown; nor should a court enlarge its liability to suit beyond what the language requires." *Eastern*

Transp. Co. v. *United States*, 272 U. S. 675, 686; *United States* v. *Griffin*, 303 U. S. 226, 239; *United States* v. *Michel*, 282 U. S. 656, 659; *Price* v. *United States*, 174 U. S. 373, 375–376. So far as these instrumentalities "partake of the sovereign character of the United States, Congress has full power to determine the extent to which they may be subjected to suit and judicial process." *Federal Land Bank* v. *Priddy*, *supra*, at p. 231.

The respondent contends that under these rules of law a Federal Government instrumentality is not subject to suit unless a statute expressly so provides. Congress has not subjected Regional to suit (A) expressly or (B) by implication.

A. CONGRESS HAS NOT EXPRESSLY SUBJECTED REGIONALS TO SUIT

1. The most significant, and, we think, controlling factor in this case is that no statute expressly subjects regionals to suit. The statute authorizing the creation of regionals (Section 201 (e) of the Act of July 21, 1932, *infra*, p. 25), does not provide that they may be sued. The legislative history of the statute does not indicate that Congress in-

[11] The provision for regionals originated in amendment proposed from the floor of the Senate, June 25, 1932, during the debate on H. R. 12445, 72d Congress, 1st Session. The amendment was proposed and expounded by Senator Steiwar and was adopted by the Senate with slight amendments, after being debated at some length (75 Cong. Rec. 13572). Nothing was said on the Senate floor concerning the suability of the regionals. The conference report on H. R. 12445 makes no reference to that subject (Rept. No. 1760, H. R., 72d Cong., 1st Session). The conference report was adopted by both Houses, and the bill was passed containing the provision for regionals in its present form.

tended regionals to be sued.[11] The charter of Regional dated September 10, 1932 (R. 11–12) does not provide that it may be sued. The Executive Order, effective May 27, 1933 (*infra*, p. 26), transferring the functions of the R. F. C. with respect to management of regionals to the jurisdiction and control of the Farm Credit Administration does not subject regionals to suit. None of the subsequent statutes with respect to regionals subject them to suit. Farm Credit Act of 1933, Sec. 64, c. 98, 48 Stat. 257, 267–268, as amended, U. S. C., Title 12, Sec. 1138d, with respect to unlawful acts and penalties; Farm Credit Act of 1937, Secs. 33-34, c. 704, 50 Stat. 703, 716–717, U. S. C., Sup. III, Title 12, Sec. 1148 with respect to additional powers of regionals.

The respondent submits that, in this absence of a clear statutory expression of Congressional intent to subject regionals to suit, the general rule, that Federal instrumentalities are immune from suit, prevails.

2. The respondent's contention that regionals are immune from suit in the absence of a contrary intent of Congress expressed in a statute is sup-

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That bill was returned to the House of Representatives by the President, without approval, July 11, 1932 (Doc. No. 360, H. R., 72d Cong., 1st Session). The provision for regionals was immediately revived as part of an extensive amendment to H. R. 9642, and was adopted in its present form. No mention of suability was made in the brief reference to regionals in the conference report on H. R. 9642 (Rept. No. 1777, H. R., 72d Cong., 1st Session, p. 19). There was no debate in either house on the provision, which was enacted as section 201 (e) of Pub. No. 302, 72d Cong., 1st Session.

ported strongly by the consideration that where Congress has intended its corporate instrumentalities to be subject to suit it has expressly so provided either by direct provision with respect to subjection to suit or by the creation of the instrumentality under general statutes of incorporation of a State or the District of Columbia providing for subjection to suit. *Olsen* v. *U. S. Spruce Co.*, 267 U. S. 462; *Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549, 565, 570; *Hopkins* v. *Clemson College*, 221 U. S. 636; *Federal Sugar Refining Co.* v. *U. S. Sugar Equalization Board, Inc.*, 268 Fed. 575 (S. D. N. Y.).

Thirty-seven of forty-three governmental corporations created by acts of Congress were expressly authorized by the Federal statutes to sue and be sued, but six, including regionals, were not so authorized.[12] The respondent submits that the omission in the case of regionals, in view of the settled practice to subject Government corporations to suit expressly by statute if that result was intended, strongly indicates that Congress did not intend regionals to be subject to suit.

3. No judicial decision except *Casper* v. *Regional Agricultural Credit Corp.*, 278 N. W. 896 (Sup. Ct. Minn.) in conflict with the decision of the court below in this case, so far as respondent is aware, has held a Federal Government corporation subject to suit in the absence of an express provision in an

[12] See Appendix, *infra*, pp. 51–56 for a list of these government corporations and the applicable statutory provisions.

applicable statute. The respondent submits th
in the absence of such an express provision app
cable to regionals "a presumption against its [t
sovereign's] suability" applies; "nor should
court enlarge its liability to suit" by inference
implication. *Eastern Transp. Co.* v. *Unit*
States, 272 U. S. 675, 686.

B. CONGRESS HAS NOT IMPLIEDLY SUBJECTED REGIONALS TO SU

The petitioner argues that Congressional inte
to subject regionals to suit is indicated by inco
poration of regionals by R. F. C. which is e
pressly subjected to suit; by formation of regio
als as corporations and by naming them corpor
tions; and by the nature of the business regional
were directed to transact. Even if Congressiona
intent to subject a governmental instrumentalit
to suit could ever be implied, which respondent
denies, such an implication is not supported b
the facts of this case.

1. The petitioner argues (Br. 8–12) that regio
als are subject to suit because Congress has au
thorized the R. F. C. to create them and has ex
pressly subjected the R. F. C. to suit (Act o
January 22, 1932, Sec. 4, c. 8, 47 Stat. 6, a
amended, U. S. C., Title 15, Sec. 604). For thi
argument the petitioner relies upon *Casper* v.
Regional Agricultural Credit Corp., 278 N. W. 896,
which states, at p. 901, that "it is hardly to be in-
ferred that immunity would be granted to the
creature where it is withheld from the creator."

The respondent contends that Regional, as a Government instrumentality, is immune from suit unless Congress has expressly provided otherwise and this immunity cannot be destroyed by the mere inference from the suability of R. F. C. Moreover, the fact that Congress authorized creation of regionals by R. F. C. instead of by the Farm Credit Administration or some other Government agency not subject to suit does not support such an inference, because there is no particular or special relation between the power of R. F. C. to create regionals and its power to sue and be sued. There is no more reason to infer that Congress intended that this attribute of suability should pass from R. F. C. to regionals than to infer that any of the other powers of R. F. C., such as its power to create regionals, passed to regionals. The attribute of suability is not an inheritable characteristic any more than the attribute whereby R. F. C. created regionals."[11]

The respondent's argument proves far too much because if it were applied to its logical extent it might be argued that the Farm Credit Administration is subject to suit in contract because the United States, its creator, is subject to suit in contract. But the Farm Credit Administration is clearly immune. *North Dakota-Montana Wheat Growers' Ass'n.* v. *United States*, 66 F. (2d) 573 (C. C. A. 8).

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[11] In the cases cited on page 11 of the petitioner's brief, the statutes under which the Government corporations were created contained specific provisions with respect to suit.

2. The petitioner argues (Br. 12–23, 28–35) that Regional is subject to suit because it was formed as a corporation and is named a corporation and because suability is inferred from the grant of corporate existence. The respondent submits that the corporate character was conferred to subserve the purposes of the Federal Government. *McCulloch* v. *Maryland*, 4 Wheat. 316, 411. Questions of substantive liabilities and immunities must be determined in the light of the governmental ends to be accomplished—not by the corporate form of the agency. The general rule that a grant of corporate existence implies liability to suit, applicable to private corporations engaged in private business not involving sovereign immunity from suit, has no application to corporate instrumentalities of the Federal Government which are immune from suit unless this sovereign immunity is abandoned by statute clearly and expressly and not by implication. The presumption of immunity from suit (*Eastern Transp. Co.* v. *United States*, 272 U. S. 675, 686) and the sovereign character of this immunity forbid the view that the mere corporate form of the Government instrumentality implies that Congress intended to subject it to suit.

The cases relied on by petitioner involving corporate instrumentalities of the Government held to be subject to suit are not in point, because in those cases the corporations were incorporated under statutes containing express provisions for suabil

ity (*Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549) or the Government was merely an incorporator or stockholder in a corporation formed under general laws giving the corporation power to sue and be sued (*United States Bank* v. *Planters' Bank*, 9 Wheat. 904).

In the *Sloan* case, *supra*, this Court stated at p. 565:

> The Shipping Act contemplated a corporation in which private persons might be stockholders and which was to be formed like any business corporation under the laws of the District, with capacity to sue and be sued. * * *

The Court stated at page 570:

> The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States. * * *

In *United States Bank* v. *Planters' Bank* this Court stated at p. 907:

> The State of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character.

In the present case, however, Congress did not direct creation of regionals under laws of incorporation of a State providing that corporations could

sue or be sued, but by a Federal statute containing no such direction authorized R. F. C. to create regionals. It is submitted that in these circumstances nothing indicates that Congress intended to waive the sovereign immunity from suit.

3. The petitioner argues (Br. 23–28) that the nature of the business Regional was directed to transact indicates that Congress intended it should be subject to suit. The respondent submits that nothing in the business which regionals were directed to transact and nothing in the present transaction indicates that Congress intended that regionals, engaged in a public and governmental activity, should be subject to suit.

a. The R. F. C. was authorized to create regionals empowered to make secured loans to farmers or stockmen for an agricultural purpose or for livestock (Section 201 (e) of the Act of July 21, 1932, *infra*, p. 25). The section immediately preceding, Section 201 (d) of that Act, entitled "An Act To relieve destitution, to broaden the lending powers of the Reconstruction Finance Corporation, and to create employment by providing for and expediting a public-works program," authorized the R. F. C. "to finance the carrying and orderly marketing of agricultural commodities and livestock produced in the United States." The "Cattle Feeding Contract" (R. 32–33) in the present case expressly recognized that the care of petitioner's cattle was undertaken by Regional "as an emergency relief measure * * *."

b. The petitioner's argument that, even in the absence of an expressed intent, the sovereign's intent to waive immunity from suit may be inferred from the type of activity involved, whether governmental or proprietary, may be applicable to instrumentalities of a state government, which may engage in activities commonly classified as governmental or proprietary for purposes of immunity from suit and other immunities. *State of North Dakota* v. *Olson*, 33 F. (2d) 848 (C. C. A. 8th); *Gross* v. *Kentucky Board of Managers*, 105 Ky. 840; cf. *Helvering* v. *Gerhardt*, 304 U. S. 405, 418; *Brush* v. *Commissioner*, 300 U. S. 352, 370–371; *Helvering* v. *Powers*, 293 U. S. 214; *South Carolina* v. *United States*, 199 U. S. 437.

Such an argument has no application, however, to instrumentalities of the Federal Government which engage only in governmental activities and activities incidental thereto. *Helvering* v. *Gerhardt*, 304 U. S. 405, 411; *New York ex rel Rogers* v. *Graves*, 299 U. S. 401, 408; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 211; *Osborn* v. *United States Bank*, 9 Wheat. 738. Therefore, the nature of the activities of a Federal instrumentality, being governmental in character, offers no basis for any inference that Congress intended them to be subject to suit.

c. *Federal Land Bank* v. *Priddy*, 295 U. S. 229, did not decide that the character of the activities of a Federal instrumentality might form the basis for a determination that Congress had intended it to be

subject to suit, even in the absence of an expr consent to suit. In that case the Court determin merely that, when Congress had given express p mission to sue Federal Land Banks, as fully natural persons, their creditors were by implic tion entitled to the remedies available against o dinary business corporations, including attac ments before judgment. In other words, th Court distinguished between the statutory right t sue a Federal instrumentality, and the remedie available to creditors and claimants in the exer cise of that right. In support of its position, th Court pointed to the National Banking Act, where in those institutions were specifically exempted from attachment and injunction before judgment. The Court's decision was qualified by the state ment that the record in the case under considera tion failed to show that the taking of the specific property levied upon would in any way interfere with the important governmental functions, which the bank was created to perform. The natural inference being, of course, that if a seizure under other conditions would interfere with the govern mental functions of the bank, the remedy would be denied to creditors and other claimants.

The respondent respectfully submits that where consent to suit is expressly granted the scope of that consent intended by Congress may be deter mined from all the circumstances, including the activities of the instrumentality, but where, in the present case, no consent whatever to sue has been expressly granted, the immunity from suit may not be destroyed by implication.

The respondent submits, therefore, that in the absence of an express consent to suit by Congress Regional as a Government instrumentality is immune from suit.

II

CONGRESS HAS NOT SUBJECTED REGIONAL TO SUIT IN TORT

Even if Regional is not in reality an incorporated bureau of the Government of the United States, and, like any other branch of the Government, immune from suit in the absence of Congressional consent, as respondent contends, there remains the question whether Regional, even though suable, is liable for torts committed by its officers, agents, or employees.

The Regional is a corporation wholly capitalized by the United States. A judgment against Regional would compel it to pay out a sum of money from the public funds in the Treasury of the United States. Such a judgment would have the same effect as if it were rendered directly against the United States for the amount specified. The jurisdiction of a court over such an action is governed by the same rule which determines the court's jurisdiction over a suit against the Government itself. *Smith* v. *Reeves,* 178 U. S. 436, 439.

The present case is an action for tort, and does not rest upon a contract, express or implied. An action will not lie against the United States for the misfeasance or nonfeasance of its officers or

agents. *Gibbons* v. *United States*, 8 Wall. 269, 27
Langford v. *United States*, 101 U. S. 341, 34
Schillinger v. *United States*, 155 U. S. 163, 16
Russell v. *United States*, 182 U. S. 516, 530; *Herl*
v. *United States*, 198 U. S. 229, 234; *Peabody*
United States, 231 U. S. 530, 539.

Similarly, when Congress provides for the estab
lishment of a government-owned corporation t
perform public and governmental functions, an
appropriates funds to be expended by the corpora
tion for stipulated governmental purposes, such
funds are not available for the payment of claim
arising out of the unlawful acts of officers or em-
ployees of the corporation. Even if Congress had
endowed this corporation with the capacity to
sue and be sued, it is not to be inferred that Con-
gress thereby waived the substantive immunity
from liability for torts. On the contrary, the stat-
utory liability to suit must be regarded as con-
fined to matters within the scope of the corporate
powers of the Government agency—not unauthor-
ized wrongs upon individuals. *Lyle* v. *National*
Home, 170 Fed. 842 (C. C. E. D. Tenn.); *Over-*
holser v. *National Home*, 68 Ohio St. 236. The rule
of the *National Home* cases has recently been ap-
plied to actions in tort against the Home Owners'
Loan Corporation, in the following cases: *Henson* v.
Eichorn, 24 F. Supp. 842 (E. D. Ill.); *Prato* v.
Home Owners' Loan Corporation, 24 F. Supp. 844
(D. C. Mass.); *contra*, *Herman* v. *Home Owners'*
Loan Corporation, 120 N. J. L. 437; *Pennel* v. *Home*

Owners' Loan Corporation, 21 F. Supp. 497 (D. Me.). The rule has also been applied to the Tennessee Valley Authority, a corporation expressly empowered to sue and be sued. *Posey* v. *Tennessee Valley Authority*, 93 F. (2d) 726 (C. C. A. 5th).

In England it is settled law that corporations established by the Government for governmental purposes, deriving their funds entirely from the Government, are "servants of the Crown," and "that the presence or absence of incorporation made no difference to the proposition that the heads of Government departments are not responsible for the [tortious] acts of subordinates." *Roper* v. *The Commissioners of His Majesty's Works and Public Buildings* [1915], 1 K. B. 45, 52.

In this country, state courts have repeatedly held that the legislature does not consent to actions in tort against a state governmental corporation, merely by conferring upon the corporation the power to sue and be sued. *White* v. *Alabama Insane Hospital*, 138 Ala. 479 (1903); *Leavell* v. *Western Kentucky Asylum*, 122 Ky. 213 (1906); *Maia's Adm.* v. *Eastern State Hospital*, 97 Va. 507 (1899); *Smith* v. *State of New York*, 227 N. Y. 405 (1920); *Yolo* v. *Modesto Irr. Dist.*, 216 Cal. 274 (1932); *Bush* v. *Highway Commission*, 329 Mo. 843 (1932); and other cases.

It is submitted that even if it can be inferred that Congress intended to permit the Regional to be sued, such permission would merely give a remedy for a claim of the type which may lawfully be

enforced against the United States, and would no create a substantive liability for the tortious act of employees.

CONCLUSION

We respectfully submit that the courts below were correct in holding that Regional is a governmental instrumentality in respect of which Congress has not waived immunity from suit, and in any event has not consented that Regional be sued in tort. The judgment of the court below, therefore, should be affirmed.

ROBERT H. JACKSON,
Solicitor General.
SAM E. WHITAKER,
Assistant Attorney General.
PAUL A. SWEENEY,
Special Assistant to the Attorney General.
EDWARD J. ENNIS,
WILLARD B. COWLES,
Attorneys.

PEYTON R. EVANS,
General Counsel,
MAY T. BIGELOW,
ARTHUR C. BERNARD,
Attorneys, Farm Credit Administration.

JANUARY 1939.

APPENDIX

The Act of July 21, 1932, Section 201, c. 520, 47 Stat. 709, 713, provides in part as follows:

(e) The Reconstruction Finance Corporation is further authorized to create in any of the twelve Federal land-bank districts where it may deem the same to be desirable a regional agricultural credit corporation with a paid-up capital of not less than $3,000,000, to be subscribed for by the Reconstruction Finance Corporation and paid for out of the unexpended balance of the amounts allocated and made available to the Secretary of Agriculture under section 2 of the Reconstruction Finance Corporation Act. Such corporations shall be managed by officers and agents to be appointed by the Reconstruction Finance Corporation under such rules and regulations as its board of directors may prescribe. Such corporations are hereby authorized and empowered to make loans or advances to farmers and stockmen, the proceeds of which are to be used for an agricultural purpose (including crop production), or for the raising, breeding, fattening, or marketing of livestock, to charge such rates of interest or discount thereon as in their judgment are fair and equitable, subject to the approval of the Reconstruction Finance Corporation, and to rediscount with the Reconstruction Finance Corporation and the various Federal reserve banks and Federal intermediate credit banks any paper that they acquire which is eligible for such purpose. All expenses incurred in

connection with the operation of such corporations shall be supervised and paid by the Reconstruction Finance Corporation under such rules and regulations as its board of directors may prescribe.

Executive Order No. 6084, dated March 27, 1933, effective May 27, 1933, provides in part:

* * * * *

(5) There are transferred to the jurisdiction and control of the Farm Credit Administration:

* * * * *

(e) The functions of the Reconstruction Finance Corporation and its board of directors relating to the appointment of officers and agents to manage regional agricultural credit corporations formed under section 201 (e) of the Emergency Relief and Construction Act of 1932; relating to the establishment of rules and regulations for such management; and relating to the approval of loans and advances made by such corporations and of the terms and conditions thereof.

RECONSTRUCTION FINANCE CORPORATION,
Washington, May 25, 1933.

REGIONAL AGRICULTURAL CREDIT CORPORATION
BULLETIN No. 60

Subject: TRANSFER OF JURISDICTION AND CONTROL TO FARM CREDIT ADMINISTRATION

To All Regional Agricultural Credit Corporations:

Under the Executive Order issued by the President on March 27, 1933, there is transferred to the

jurisdiction and control of the Farm Credit Administration: The functions of the Reconstruction Finance Corporation and its board of directors relating to the appointment of officers and agents to manage regional agricultural credit corporations formed under section 201 (e) of the Emergency Relief and Construction Act of 1932; relating to the establishment of rules and regulations for such management; and relating to the approval of loans and advances made by such corporations and of the terms and conditions thereof.

The Executive Order above referred to will become effective on May 27, 1933. Thereafter all communications with respect to the operations of the regional agricultural credit corporations (except as stated in Mr. Brennan's circular letter of May 23, 1933, and Mr. Reed's circular letter of May 24, 1933) should be addressed to George M. Brennan, Farm Credit Administration, Washington, D. C. Until you are otherwise advised the rules and regulations heretofore prescribed by the Directors of the Reconstruction Finance Corporation for the management and operation of the regional agricultural credit corporations remain in full force and effect, with the exception that all action heretofore requiring the approval of the Reconstruction Finance Corporation or the Directors thereof will require the approval of the Farm Credit Administration by the Governor thereof, or by such other person or persons as may be designated by him for the purpose.

By Order of the Directors of the Reconstruction Finance Corporation.

/s/ L. P. Bethea,
(L. P. Bethea,)
Acting Secretary.

Approved:
/s/ H. Morgenthau, Jr.,
(Henry Morgenthau, Jr.,)
Governor, Farm Credit Administration.

Reconstruction Finance Corporation,
Washington, October 1, 1933.

[Excerpts]

Regional Agricultural Credit Corporation
Bulletin No. 1

Confidential, Not For Publication.
Subject: General Instructions.

To All Regional Agricultural Credit Corporations and Branches:

* * * * *

3. Personnel.

Members of the boards of directors and of the branch committees, and all officers and employees of the regional agricultural credit corporations, shall be appointed by the Reconstruction Finance Corporation. Recommendations for employment should be submitted to the Reconstruction Finance Corporation accompanied by Personal History and

Service Record cards (Form S1). The compensation of all officers and employees must be reduced, through furlough or otherwise, in accordance with the terms of Part II, Title I of the Legislation Appropriation Act, approved June 30, 1932, concerning which more detailed advice will be furnished shortly.

4. OPERATING PROCEDURE.

The provision of capital funds; the establishment of accounts with the Treasurer of the United States; the payment of salaries and expenses, as well as accounting procedure to be adopted, and the form of reports to be made to the Reconstruction Finance Corporation will be discussed in future bulletins.

* * * * *

9. LENDING POLICIES.

Undue competition on the part of regional agricultural credit corporations with existing agencies, both governmental and private, engaged in similar financing, would tend to create an undesirable condition. This is particularly true since the regional agricultural credit corporations are of a more or less temporary character. It is intended that the regional agricultural credit corporations be, as far as possible, non-competitive with other governmental agencies and private concerns engaged in financing of a similar character. Accordingly, the following policy should be carefully observed:

An applicant whose legitimate credit needs are being met by an existing agency, whether governmental or private, should be discour-

aged from transferring his credit relationship to a regional agricultural credit corporation where such agency is willing and able to continue to finance applicant on an adequate basis and at reasonable rates of interest. However, where such agency requires the borrowers from it to pay bonus charges or to purchase capital stock, this fact may be considered a justifiable reason for a desire to transfer the relationship.

* * * * *

16. LIVESTOCK INSPECTORS.

The originals of the above forms should at all times be on file with the regional agricultural credit corporation; and copies of same should be forwarded to the Reconstruction Finance Corporation with the recommendation of the regional agricultural credit corporation as to the employment of the applicant as a livestock inspector. Information as to an inspector need not be limited to that called for by the above forms, and any additional information which the regional agricultural credit corporation may have as to the qualifications of the applicant should likewise accompany the report forms.

* * * * *

20. CONFIDENTIAL RELATIONSHIP.

Attention is directed to the fact that the business of the regional agricultural credit corporations and of the applicants must be regarded as strictly confidential by all members of the Boards of Directors and Branch Committees and by all officers and employees of the regional agricultural credit corpora-

tions. Employees of the regional credit corporations should be cautioned that violation of the above instructions may be occasion for dismissal. In no case should press statements be issued regarding particular applications received, approved or disapproved.

21. The Act contemplates that the Reconstruction Finance Corporation shall establish rules and regulations under which the regional agricultural credit corporations will conduct their operations. For the present, the regional agricultural credit corporations will be advised of such rules and regulations (as well as of other pertinent matters) through the issue of bulletins. Statements in this and subsequent bulletins, relative to policies and procedure, are to be considered as rules and regulations so promulgated.

/s/ G. R. COOKSEY,
Secretary.

[Excerpt]

RACC BULLETIN NO. 5, DATED OCTOBER 17, 1932
Subject: EXPENSES OF REGIONAL AGRICULTURAL CREDIT CORPORATION

* * * * *

(8) *Telegrams.*—Official telegrams may be sent either "Paid" or "Collect," and should be endorsed "official business, regional agricultural credit corporation of _____ (location), government rate."

* * * * *

RECONSTRUCTION FINANCE CORPORATION,
Washington, October 19, 1932.

REGIONAL AGRICULTURAL CREDIT CORPORATION
BULLETIN No. 7

Confidential, Not For Publication.
Subject: OATH OF OFFICE.

To All Regional Agricultural Credit Corporations:

All directors, members of Branch Committees, officers and employees of the regional agricultural credit corporations (principal offices and branches) will subscribe to an oath of office on Standard Form No. 8. A supply of such forms will be sent to the secretary of each corporation today.

When properly signed and acknowledged, the oaths of office should be delivered to the secretaries of the respective regional agricultural credit corporations. It will be the duty of the secretary of each regional agricultural credit corporation to see that properly subscribed oaths of office are delivered to him, and he will be responsible for their safe keeping.

By direction of the Board of Directors.

/s/ G. R. COOKSEY,
(G. R. Cooksey),
Secretary.

* * * * *

Standard Form No. 8
(Approved by the President, May 22, 1925)

OATH OF OFFICE

Prescribed by Section 1757, Revised Statutes of the United States.

(Department or Establishment) (Bureau or Office)

I, _____, do
(Name in full, printed or typed)
solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

_____
(Signature of Appointee)

RECONSTRUCTION FINANCE CORPORATION,
Washington, November 3, 1932.

REGIONAL AGRICULTURAL CREDIT CORPORATION
BULLETIN No. 10

Confidential, Not For Publication.

Subject: USE OF FRANKED ENVELOPES.

To All Regional Agricultural Credit Corporations:

As you have been previously advised, it has been decided that the regional agricultural credit corporations are entitled to the use of the franking privilege. Every precaution must be taken to insure that improper use is not made of the franking privilege and that the use of franked envelopes is at all times restricted to official business.

Franked envelopes may be used only by the regional agricultural credit corporations (principal and branch offices) for customary business purposes. Such envelopes may be used by paid em-

ployees in submitting reports from the field to their offices, but may not be used by members of boards of directors or branch committees in their capacity as such members.

It is appreciated that in such instances directors and members of branch committees may be called upon to forward to the principal or branch office inquiries and requests for application forms in connection with which it would appear in order that such members be reimbursed for actual postage required for the purpose.

(Signed) FORD E. HOVEY,
Chief, Agricultural Credit Division.

FARM CREDIT ADMINISTRATION,
Washington, D. C., November 1, 1934.

RACC 200

Subject: FILING OF CAPITAL STOCK TAX RETURN.

To All Regional Agricultural Credit Corporations:

1. The Commissioner of Internal Revenue has ruled that Regional Agricultural Credit Corporations are exempt from the capital stock tax imposed by Section 701 of the Revenue Act of 1934 (U. S.) by virtue of Section 101 (15) of such Act.

2. In connection with this ruling, there is quoted below for your information and guidance the relevant paragraphs of a letter which we have recently received from the Deputy Commissioner of Internal Revenue requesting that the Regional Agricultural Credit Corporations, though exempt, file initial capital stock tax returns in order to establish their exemptions.

TREASURY DEPARTMENT,
Washington, October 18, 1934.

FARM CREDIT ADMINISTRATION,
Washington, D. C.

Attention: Scott W. Hovey, General Counsel.

GENTLEMEN: In your communication of October 13, 1934, you request information as to whether the regional agricultural credit corporations created under section 201 (e) of the Emergency Relief and Construction Act of 1932, which are now being administered by the Farm Credit Administration under and by virtue of an Executive Order of the President of the United States, are subject to the capital stock tax for the taxable year ended June 30, 1934, and as to whether such corporations are required to file capital stock tax returns for the taxable year ended June 30, 1934.

You are advised that it would appear that the agricultural credit corporations created under section 201 (e) of the Emergency Relief and Construction Act of 1932 are "instrumentalities of the United States" and would, therefore, be exempt from the capital-stock tax under the provisions of section 101 (15) of the Revenue Act of 1934. It appears, therefore, that the procedure most convenient to both the corporations created and organized under section 201 (e) of the Emergency Relief and Construction Act of 1932, and the Bureau, is for the corporations to file initial Forms 707 for the taxable year ended June 30, 1934, so completed as to constitute formal claims for exemption. To do this the corporations need only complete Items 1 to 6, inclusive, and Items 8 and 9 on the first page and (A) (1) on the second

page of Form 707, revised 1934. Statements should be attached to the forms showing that the corporations submitting them are in fact "instrumentalities of the United States." After this right to exemption is once established, the corporations need not thereafter make capital-stock tax returns or furnish any further proof with respect to their status under the law.

Respectfully,

(Signed) D. S. BLISS,
Deputy Commissioner.

3. Section 701 of the Revenue Act provides: That for each year ending June 30, beginning with the year ending June 30, 1934, every domestic corporation shall make a return, under oath, within one month after the close of the year, with respect to which such tax is imposed, to the Collector for the District in which is located its principal place of business. Such return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe (Subsections (a) and (d)); the taxes imposed by Section 701 do not apply to any corporation enumerated in Section 101 (Subsection (c)).

4. It is suggested that, when filing their initial capital stock tax returns with their respective internal revenue collectors, each of the regional agricultural credit corporations inclose a copy of the above quoted letter in order to establish their exemption from the capital stock tax.

5. In view of the provisions in Section 701 of the Revenue Act, referred to in paragraph 3, above, it is suggested that, as soon as possible, a copy of the

blank form on which the initial capital stock tax return is required to be made, be obtained from the Internal Revenue Collector for the district in which the principal office of such corporation is located, and executed and filed with such Collector by the executive vice-president or officer in charge of the principal office of each corporation (branch offices not being required to file any return in this connection).

A. T. ESGATE,
Acting Director,
Regional Agricultural Credit Division.

11-1-34
1365

FARM CREDIT ADMINISTRATION
Washington, D. C., February 24, 1936.

To All: *General Agents and General Counsel*	GA	332
Federal Land Banks	FLB	1032
Federal Intermediate Credit Banks	FICB	484
Production Credit Corporations	PCC	306
Banks for Cooperatives	BC	315
Regional Agricultural Credit Corporations	RACC	282

Subject: FEES TO UNITED STATES MARSHALS AND CLERKS OF UNITED STATES DISTRICT COURTS—WHEN PAYABLE BY CORPORATIONS OF FARM CREDIT SYSTEM.

1. We recently learned of a ruling issued by the Department of Justice with respect to the payment

of clerks' and marshals' fees for services rendered at the instance of certain Government corporations or in their behalf. This ruling is contained in the Department's Circular No. 2609 (revised), addressed to United States marshals and clerks of United States district courts, under date of November 12, 1934. A copy of this circular is attached hereto.

2. Upon learning of this circular, we addressed an inquiry to the Department of Justice respecting its applicability to the various corporations of the farm credit system. We are now in receipt of a reply, dated January 31, 1936, a copy of which is attached hereto.

3. You will note from these attachments that Department of Justice Circular No. 2609 (revised) is applicable to all corporations of the farm credit system whose stock is wholly owned by the United States, but that the other corporations under the supervision of the Farm Credit Administration will be required to pay the fees in question.

PEYTON R. EVANS,
General Counsel.

2-24-36
1990

Attachments

[Copy]

DEPARTMENT OF JUSTICE,
Washington, D. C., January 31, 1936.

PEYTON R. EVANS, ESQ.,
General Counsel, Farm Credit Administration, Washington, D. C.

SIR: In reply to your letter of January 14, 1936, concerning fees payable to United States marshals

and clerks of United States district courts for services on behalf of corporations under the supervision of the Farm Credit Administration, you are informed that it has been determined that the Federal Land Banks should be required to pay the fees claimed by these officials from private litigants. In other words, Federal Land Banks are not regarded as "other similar corporations" within the meaning of Department Circular 2609, Revised. The same conclusion must necessarily follow with regard to Banks for Cooperatives, Production Credit Associations and National Farm Loan Associations.

It has been concluded that the other corporations mentioned in your letter do come within the meaning of "other similar corporations" in said circular, namely, the Federal Farm Mortgage Corporation, Federal Intermediate Credit Banks, Production Credit Corporations, and the Regional Agricultural Credit Corporations.

With regard to the certificate referred to in the second paragraph of the circular, it would seem that the certification proposed by you, namely: "----------, General Counsel, by ----------, District General Counsel of the Farm Credit Administration," will satisfy the requirements of the circular.

Respectfully,

(Signed) C. E. STEWART,
Administrative Assistant
to the Attorney General.

[Copy]

DEPARTMENT OF JUSTICE,
Washington, D. C., November 12, 1934.

CIRCULAR No. 2609 (REVISED)

To United States Marshals and Clerks of United States District Courts:

Reference is made to suits which have been instituted in the United States district courts, to which the Reconstruction Finance Corporation, the Home Owners' Loan Corporation, the Tennessee Valley Authority, and other similar corporations are parties.

It is the view of the Department that in all suits filed or defended by such corporations, the clerks' and marshals' fees for services rendered at their instance or in their behalf, should be treated as constructive earnings from the United States, provided, that upon the termination of cases to which the Reconstruction Finance Corporation is a party, said corporation will also be billed by the clerk for the clerk's and marshal's *fees,* which will either be paid or, in lieu thereof, there will be filed with the clerk a certificate of the General Counsel or Treasurer of the corporation,[1] to the effect that the Corporation has not been reimbursed by the primary obligor covering such fees and that it had no reimbursable contract, or, if it did have a reimbursable contract, that it was unable to recover on same and in such event no fees should be paid by the corporation.

---

[1] See letter dated January 31, 1936, from Department of Justice (third paragraph) for method of executing certificate, in cases involving Federal Farm Mortgage Corporation.

However, the *expenses* incurred by marshals in connection with the service of process, or otherwise, in behalf of such corporations, should be charged to and collected from them and handled in the same manner as are expenses collected from private litigants.

Respectfully,

WILLIAM STANLEY,
The Assistant to the Attorney General.

FARM CREDIT ADMINISTRATION,
Washington, D. C., September 29, 1936.

RACC 321

Subject: APPLICATION OF STAMP TAXES UNDER TITLE VIII OF THE REVENUE ACT OF 1926, AS AMENDED, WITH RESPECT TO TRANSACTIONS INVOLVING EXEMPT FEDERAL GOVERNMENTAL AGENCIES.

To All Regional Agricultural Credit Corporations:

1. Several instances have come to our attention where difficulty has been experienced with officials whose duty it is to record conveyances of real estate. Notwithstanding the fact that the Bureau of Internal Revenue has ruled that tax exempt corporations operating under the supervision of the Farm Credit Administration are not liable for the tax, and that the tax in question cannot be assessed against them, the recording officials have in some instances withheld recordation when unstamped instruments were offered for record.

2. As a result of conferences with the Bureau of Internal Revenue, instructions have now been issued to the collectors of internal revenue through-

out the country. Attached hereto is a copy of a circular letter dated September 1, 1936, signed by the Commissioner of Internal Revenue, embodying the Bureau's instructions.

3. Your particular attention is invited to the next to the last paragraph of the circular, containing the statement that there is no existing Federal statute under the provisions of which the recording of unstamped instruments would be contrary to law.

4. It is suggested that in the future where difficulty with recording officials is experienced, they be referred to the collector of internal revenue for the district, who will presumably advise in accordance with the terms of the circular letter.

PEYTON R. EVANS,
General Counsel.

9-29-36
2239

Attachment.

[Copy]

MT: ST—Mimeograph
Coll. No. 4497

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER
OF INTERNAL REVENUE,
Washington, D. C., September 1, 1936.

APPLICATION OF STAMP TAXES UNDER TITLE VIII OF THE REVENUE ACT OF 1926, AS AMENDED, WITH RESPECT TO TRANSACTION INVOLVING EXEMPT FEDERAL GOVERNMENTAL AGENCIES

Collectors of Internal Revenue and Others Concerned:

Questions have been presented relative to the application of the stamp taxes imposed under Title VIII of the Revenue Act of 1926, as amended,

where one of the parties to the transaction involved is the Reconstruction Finance Corporation, a Federal land bank, or some other governmental agency which is specifically exempted from the tax.

Section 800 of the Revenue Act of 1926 imposes a liability to the stamp tax upon any person who makes, signs, issues, sells, removes, consigns or ships the several instruments described in Schedule A of Title VIII, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned or shipped, and, except as therein or otherwise exempted, either party to any of the transactions involved is subject to the tax. The fact that a Federal agency, specifically exempted from the tax might be a party to the transactions does not relieve the other parties to the transactions from liability for the payment of the taxes, unless such parties are agencies or instrumentalities of a State or the United States or are otherwise not subject to the tax.

Where a non-exempt party to a transaction involving a taxable instrument is unable or unwilling to pay the tax due, the transaction, nevertheless, is subject to the tax, and if the Federal governmental agency in such a case pays the tax, such payment is to be regarded as a payment on behalf of the taxable party. Collectors should not, however, make any attempt to effect direct collection of such taxes from the Federal governmental agencies. In any case where it is found that the stamp tax due on such a transaction has not been paid, collection of the tax should be made from the other parties to the transactions who are liable.

In any transaction involving the conveyance of realty, the instrument of conveyance is subject to

tax, and the question of whether or not the deed of conveyance may be delivered to the purchaser without having affixed thereto stamps denoting payment of the tax, is governed by the law of the local jurisdiction. In the case of a sale under foreclosure where the purchaser is an exempted Federal agency, the mortgagor is liable for the tax. In such a case, if the mortgagor does not voluntarily affix the stamps, the sheriff, or other person making the sale, should affix the required stamps on behalf of the mortgagor and include the cost thereof as a necessary expense of the sale; or where a conveyance is made by a defaulting mortgagor to an exempted Federal agency as mortgagee, the required stamps must be affixed to the deed of conveyance by the mortgagor.

The question of whether unstamped deeds of conveyance may be received by State recording officers for the purpose of recordation, is likewise governed by the law of the local jurisdiction. There is no existing Federal statute under the provisions of which the recording of unstamped deeds would be contrary to the law. The Bureau endeavors to secure the cooperation of State recorders in assisting the Federal Government to collect any revenue to which it may be justly entitled, and requests such recorders to advise the collectors of internal revenue in all cases where deeds are presented for recordation without having the proper stamps affixed thereto.

Correspondence in regard to the instructions set forth herein should refer to the number of this mimeograph and to the symbols MT: ST.

GUY T. HELVERING,
Commissioner.

FARM CREDIT ADMINISTRATION,
Washington, D. C., February 6, 1936.
RACC 279

Subject: EXEMPTION OF REGIONAL AGRICULTURAL CREDIT CORPORATIONS FROM TAXATION BY STATES AND LOCAL AUTHORITIES

To All Regional Agricultural Credit Corporations:

1. There is attached a copy of a memorandum embodying an opinion recently rendered to one of the regional agricultural credit corporations.

2. It will be observed that the conclusion reached is to the effect that the regional agricultural credit corporations are exempt from all manner of taxation by state, municipal, and local authorities.

PEYTON R. EVANS,
General Counsel.

2-6-36
1982

Attachment.

OCTOBER 19, 1932.

[Excerpts]

REGIONAL AGRICULTURAL CREDIT CORPORATION
BULLETIN No. 8

Confidential, Not for Publication.
Subject: ACCOUNTING SYSTEM.
To All Regional Agricultural Credit Corporations:

* * * * *

Pay Voucher for Personal Services.—This form will be supplied by the Reconstruction Finance Corporation (R. A. C. C. Form #4) and is to be prepared in duplicate.

Travel Voucher.—This form will be supplied by the Reconstruction Finance Corporation (R. A. C. C. Form #5) and is to be prepared in duplicate.

Voucher for Purchases and Services Other Than Personal.—This form will be supplied by the Reconstruction Finance Corporation (R. A. C. C. Form #6) and is to be prepared in duplicate.

* * * * *

Deposit Ticket.—Form #6599 furnished by the Treasury Department to be prepared in quadruplicate and distributed as follows:

Original, Dupicate, and Triplicate to bank with deposit.

Duplicate to be signed and returned by the receiving bank and filed by the principal office.

Quadruplicate to Chief Auditor at Washington.

Daily Cash Letter.—This form should reflect the A. B. A. number and amount of each check attached and forwarded to the Federal Reserve Bank with the deposit ticket. A copy of this letter should be retained in the files of the principal office.

* * * * *

Cash Receipts.—All checks received should be deposited promptly each day by the Principal office and each Branch office with the Federal Reserve Bank or Branch serving the territory in which are located the banks upon which the checks are drawn. Several deposits may be required each day, separate deposit tickets and daily cash letters being prepared for each deposit.

* * * * *

Depositary will date and sign this and send it to the Treasurer U. S., with daily transcript of same date

CERTIFICATE OF DEPOSIT FOR CHECKING ACCOUNT

_____ Deposit No. _____
(Address of depositor and date sent) (To be filled in by depositor)

_____, _____
(Name of depositor) (Title)

has deposited with _____, _____
(Name of depositary bank, or U. S. Treasurer's Office) (Place)

_____ Dollars

For Credit, subject to check, in the _____ disbursing account of

_____ Symbol No. _____
(Name of officer to be credited)

$

_____
(Address)

_____

I certify that the above amount has been received and credited in the account of the Treasurer of the U. S.

_____
(Date credited)

_____
Cashier.

U. S. Government Printing Office 2–17038

47

Regional Agricultural Credit Corporation of Sioux City, Iowa 155,691

Omaha, Nebraska, _____

5 TREASURER OF THE UNITED STATES 15-51

Treas. Seal | Pay to the Order of_____ $_____

The Sum Of_____Dollars

Object for which drawn:

Vo. No.

Countersigned

_____ 93-354

FORM APPROVED BY COMPTROLLER OF THE TREASURY

January 27, 1913.

This check must be indorsed in ink or indelible pencil on the line below by the person in whose favor it is drawn, and the name must be spelled exactly the same as it is on the face of the check.

If indorsement is made by mark (X) it must be witnessed by two persons who can write, giving their place of residence in full.

_____

(Sign on this line.)

RECONSTRUCTION FINANCE CORPORATION,

Washington, April 28, 1933.

Regional Agricultural Credit Corporation Bulletin No. 51.

Confidential, Not for Publication.

Subject: DEPOSITS IN ACCOUNT OF RECONSTRUCTION FINANCE CORPORATION (Symbol 93-300).

To All Regional Agricultural Credit Corporations:

Funds for deposit in the account of the Reconstruction Finance Corporation with the Treasurer

of the United States (Symbol 93–300) should be remitted to Federal Reserve Banks or Branches addressed as follows:

Federal Reserve Bank of _____,
Custodian, Reconstruction Finance Corporation, _____, _____.
(City) (State)

or:

_____ Branch,
Federal Reserve Bank of _____,
Custodian, Reconstruction Finance Corporation, _____, _____.
(City) (State)

In some instances Custodian Banks and the Treasurer's Office have been unable to readily identify items other than repayments on rediscounted notes remitted for deposit in this Corporation's account. Certificates of deposit covering such remittances should be accompanied by a letter of transmittal or a memorandum giving sufficient information with respect to each item to enable the Custodian Bank to properly identify and allocate the collection in its daily report to the Treasurer of the Reconstruction Finance Corporation.

FORD E. HOVEY,
Chief, Agricultural Credit Division.

SEPTEMBER 30, 1937.

(Excerpts)

FARM CREDIT ADMINISTRATION ORDER NO. 202

Subject: CONSOLIDATION OF REGIONAL AGRICULTURAL CREDIT CORPORATIONS OF ALBANY, NEW YORK; BALTIMORE, MARYLAND; RALEIGH, NORTH CAROLINA; COLUMBUS, OHIO; JACKSON, MISSISSIPPI; AND ST. LOUIS, MISSOURI; GRANT OF CHARTER TO REGIONAL AGRICULTURAL CREDIT CORPORATION OF WASHINGTON, D. C.

WHEREAS, authority is vested in the Farm Credit Administration by the Farm Credit Act of 1937 to order and effect the consolidation of two or more regional agricultural credit corporations on such terms and conditions as it shall direct and to grant charters to, prescribe by-laws for, and fix the capital of regional agricultural credit corporations which may be formed by such consolidations; and

WHEREAS I, as Governor of the Farm Credit Administration, have found that the consolidation of the following named regional agricultural credit corporations (hereinafter called the "constituent corporations")

Regional Agricultural Credit Corporation of Albany, Albany, New York.

Regional Agricultural Credit Corporation of Baltimore, Baltimore, Maryland.

Regional Agricultural Credit Corporation of Raleigh, Raleigh, N. Carolina.

Regional Agricultural Credit Corporation of Columbus, Columbus, Ohio.

Regional Agricultural Credit Corporation of Jackson, Jackson, Mississippi.
Regional Agricultural Credit Corporation of St. Louis, St. Louis, Missouri.

into one corporation will effect a more efficient and economical administration of the business heretofore conducted by such constituent corporations,

NOW, THEREFORE, it is hereby ordered:

1. That the constituent corporations be and they hereby are consolidated into one corporation to be known as the "Regional Agricultural Credit Corporation of Washington, D. C.," which shall have all the rights, powers, authority and exemptions, shall be subject to the same supervision and control, and shall have its expenses paid in the same manner as provided by law in respect to the constituent corporations.

2. That there be and hereby is granted to the Regional Agricultural Credit Corporation of Washington, D. C., the following charter:---------

* * * * *

W. I. MYERS,
Governor, Farm Credit Administration.

INSTANCES WHERE CONGRESS HAS AUTHORIZED SUIT AGAINST GOVERNMENT CORPORATIONS

National Banks (c. 106, 13 Stat. 99, 101).

* * * sue and be sued, complain and defend, in any court of law and equity as fully as natural persons; * * *

Federal Deposit Ins. Corp. (c. 89, 48 Stat. 162, 172).

To sue and be sued, complain and defend, in any court of law or equity, State or Federal.

Federal Reserve Banks (c. 6, 38 Stat. 251, 254).

> To sue and be sued, complain and defend, in any court of law or equity.

Foreign Banking Corporations (c. 18, 41 Stat. 378, 379).

> * * * to sue and be sued, complain, and defend in any court of law or equity; * * *

Federal Land Banks (c. 245, 39 Stat. 360, 363).

> To sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons.

National Farm Loan Associations (c. 245, 39 Stat. 360, 365).

> (Articles of Association) may contain any other provision, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.

Joint Stock Land Banks (c. 245, 39 Stat. 360, 374).

> * * * shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal Land banks by this Act * * *.

Federal Farm Mortgage Corporations (c. 7, 48 Stat. 344, 345).

> * * * shall have power to sue and be sued in any court, * * *

Federal Intermediate Credit Banks (c. 252, 42 Stat. 1454, 1455).

> * * * shall have power to sue and be sued both in law and equity, * * *.

Production Credit Corporation, Production Credit Association, Central Bank for Cooperatives, Regional Bank for Cooperatives (c. 98, 48 Stat. 257, 266).

> * * * shall have power to sue and be sued in any court, * * *.

National Agricultural Credit Corps. (c. 252, 42 Stat. 1454, 1462).

> To sue and be sued, complain and defend in any court of law or equity, * * *.

Federal Home Loan Bank (c. 522, 47 Stat. 725, 735).

> * * * to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; * * *.

Home Owners' Loan Corporation (c. 64, 48 Stat. 128, 129).

> * * * which shall have authority to sue and to be sued in any court of competent jurisdiction, Federal or State, * * *.

Federal Housing Administrator (c. 614, 49 Stat. 684, 722).

> "* * * to sue and be sued in any court of competent jurisdiction, State or Federal."

National Mortgage Associations (c. 847, 48 Stat. 1246, 1253).

> To sue and be sued, complain and defend, in any court of law or equity, State or Federal.

Federal Savings & Loan Ins. Corporation (c. 847, 48 Stat. 1246, 1256).

To sue and be sued, complain and defend, in any court of law or equity, State or Federal.

Federal Credit Union (c. 750, 48 Stat. 1216, 1218).

To sue and be sued.

Corporation of Foreign Security Holders (c. 38, 48 Stat. 74, 93).

* * * to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; * * *.

China Trade Act Corporation (c. 346, 42 Stat. 849, 851).

(c) May sue and be sued;

War Finance Corporation (c. 45, 40 Stat. 506, 507).

* * * to sue and be sued; to complain and defend in any court of competent jurisdiction, State or Federal; * * *.

Textile Foundation (c. 440, 46 Stat. 539, 540).

(b) May sue and be sued; * * *.

Reconstruction Finance Corp. (c. 8, 47 Stat. 5, 6).

* * * to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; * * *.

Tennessee Valley Authority (c. 32, 48 Stat. 58, 60).

(b) May sue and be sued in its corporate name.

The National Asylum for Disabled Volunteer Soldiers (c. 21, 14 Stat. 10).

* * * to sue and be sued in courts of law and equity; * * *.

National Trade Union (c. 567, 24 Stat. 86).

* * * to sue and be sued, to implead and be impleaded, * * *.

The American National Red Cross (c. 23, 33 Stat. 599, 600).

* * * to sue and be sued in courts of law and equity within the jurisdiction of the United States; * * *.

Boy Scouts of America (c. 148, 39 Stat. 227).

* * * to sue and be sued in courts of law and equity within the jurisdiction of the United States; * * *.

The American Legion (c. 59, 41 Stat. 284, 285).

* * * to sue and be sued in courts of law and equity; * * *.

Belleau Wood Memorial Association (c. 228, 42 Stat. 1441).

(b) may sue and be sued;

The Grand Army of the Republic (c. 242, 43 Stat. 358, 359).

* * * capable of suing and being sued, * * *.

The United States Blind Veterans of the World War (c. 296, 43 Stat. 535, 536).

* * * to sue and be sued in courts of law and equity; * * *.

Disabled American Veterans of the World War (c. 268, 47 Stat. 320, 321).

* * * to sue and be sued in courts of law and equity; * * *.

American War Mothers (c. 303, 43 Stat. 966, 967)
* * * to sue and be sued in courts
law and equity; * * *.

Inland Waterways Corporation (c. 243, 43 Sta
360, 362).

(b) May sue and be sued in its corporat
name;

INSTANCES WHERE SUIT HAS NOT BEEN AUTHORIZED

Regional Agricultural Credit Corp. (c. 520, 47 Sta
709, 713).

(No authority to sue or be sued.)

Federal Savings & Loan Associations (c. 64, 4
Stat. 128, 132–134; c. 168).

(No authority to sue or be sued.)

Smithsonian Institution (c. 178, 9 Stat. 102; c.
17 Stat. 1; c. 69, 19 Stat. 240, 253; c. 36, 28 Sta
41).

(No authority to sue or be sued.)

*Board of Trustees of the National Training Scho
for Boys* (c. 90, 19 Stat. 49).

(No authority to sue or be sued.)

*Board of Trustees of the National Training Scho
for Girls* (c. 595, 25 Stat. 245, 246).

(No authority to sue or be sued.)

*The Columbia Institution for the Instruction o
the Deaf and Dumb, and the Blind* (c. 46, 11 Sta
161).

(No authority to sue or be sued.)

U. S. GOVERNMENT PRINTING OFFICE

pp. 4 · 7

SUPREME COURT OF THE UNITED STATES.

No. 364.—October Term, 1938.

Keifer and Keifer, a Co-partnership, composed of J. Warren Keifer, Jr., and Oswin Keifer, Petitioner,
vs.
Reconstruction Finance Corporation and Regional Agricultural Credit Corporation of Sioux City, Iowa.

On Writ of Certiorari from the United States Circuit Court of Appeals for the Eighth Circuit.

[February 27, 1939.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The Court took this case for review because an important question of federal law called for settlement, particularly in view of a conflict between the court below and the Supreme Court of Minnesota. *Casper* v. *Regional Agricultural Credit Corporation*, 202 Minn. 433. The question is whether a Regional Agricultural Credit Corporation, in the circumstances presently to be stated, is immune from suit.

On July 21, 1932, Congress enlarged the powers of the Reconstruction Finance Corporation (hereafter called "Reconstruction") established early that year, Act of January 22, 1932, c. 8, 47 Stat. 5, by authorizing it, among other things, to create regional agricultural credit corporations "in any of the twelve Federal land-bank districts." Emergency Relief and Construction Act of 1932, § 201(e), c. 520, 47 Stat. 709, 713. Each corporation was to have a paid-up capital of not less than $3,000,000 to be subscribed for by Reconstruction, was to be managed by appointees of Reconstruction, and was empowered to make loans to farmers and stockmen for agricultural purposes or for raising and marketing livestock. Accordingly, on September 10, 1932, Reconstruction chartered the Regional Agricultural Credit Corporation of Sioux City, Iowa (hereafter called "Regional"). Regional, in due exercise of its powers, entered into so-called cattle-feeding contracts, whereby it undertook to provide sufficient feed and water for livestock with appropriate security for rendering these services. Failure through negligence to provide proper care for cattle delivered

under this arrangement, with resulting damage to the livestock, is the basis of this suit brought by petitioner, plaintiff below, against Reconstruction and Regional. Both defendants demurred on several grounds, of which challenge to the jurisdiction of the court is alone pertinent here. The District Court sustained the demurrers and dismissed the suit. 22 F. Supp. 918. The Court of Appeals affirmed, holding for Reconstruction because its control of Regional had been transferred by Executive Order (No. 6084, dated March 27, 1933, effective May 27, 1933) to the Farm Credit Administration prior to the alleged cause of action, and for Regional because it was found immune from suit. 97 F. (2d) 812. Certiorari was granted, directed solely to the latter issue. 305 U. S. —.

The starting point of inquiry is the immunity from unconsented suit of the government itself. As to the states, legal irresponsibility was written into the Eleventh Amendment; as to the United States it is derived by implication. *Monaco* v. *Mississippi*, 292 U. S. 313, 321. For present purposes it is academic to consider whether this exceptional freedom from legal responsibility rests on the theory that the United States is deemed the institutional descendant of the Crown, enjoying its immunity but not its historic prerogatives, cf. *Langford* v. *United States*, 101 U. S. 341, 343, or on a metaphysical doctrine "that there can be no legal right as against the authority that makes the law on which the right depends." *Kawananakoa* v. *Polyblank*, 205 U. S. 349, 353. But because the doctrine gives the government a privileged position, it has been appropriately confined.[1]

Therefore, the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. *United States* v. *Lee*, 106 U. S. 196, 211, 221; *Sloan Shipyards* v. *U. S. Fleet Corp.*, 258 U. S. 549, 567. For more than a hundred years corporations have been used as agencies for doing work of the government. Congress may create them "as appropriate means of executing the powers of government, as, for instance, . . . a railroad corporation for the purpose of promoting commerce among the states." *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529. But this would not confer

[1] See Professor Borchard's bibliography in (1934) 20 A. B. A. J. 747, 748, and the collection of authorities in Judge Mack's opinion in The Pesaro, 277 Fed. 473, *rev'd*, 271 U. S. 562.

on such corporations legal immunity even if the conventional to-sue-and-be-sued clause were omitted. In the context of modern thought and practice regarding the use of corporate facilities, such a clause is not a ritualistic formula which alone can engender liability like unto indispensable words of early common law, such as "*warrantizo*" or "to A and his heirs", for which there were no substitutes and without which desired legal consequences could not be wrought. Littleton, Tenures (Wambaugh ed.) §§ 1, 733.

Congress may, of course, endow a governmental corporation with the government's immunity. But always the question is: has it done so? *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231. Cf. *Helvering* v. *Gerhardt*, 304 U. S. 405, 411-412n. This is our present problem. Has Congress endowed Regional with immunity in the circumstances which enveloped its creation? It is not a textual problem; for Congress has not expressed its will in words. Congress may not even have had any consciousness of intention. The Congressional will must be divined, and by a process of interpretation which, in effect, is the ascertainment of policy immanent not merely in the single statute from which flow the rights and responsibilities of Regional, but in a series of statutes utilizing corporations for governmental purposes and drawing significance from dominant contemporaneous opinion regarding the immunity of governmental agencies from suit.

Because of the advantages enjoyed by the corporate device compared with conventional executive agencies, the exigencies of war and the enlarged scope of government in economic affairs have greatly extended the use of independent corporate facilities for governmental ends.[2] In spawning these corporations during the past two decades, Congress has uniformly included amenability to law. Congress has provided for not less than forty of such corporations discharging governmental functions, and without exception the authority to-sue-and-be-sued was included.[3] Such a firm practice is partly an indication of the present climate of

[2] See Thurston, Government Proprietary Corporations; Van Dorn, Government Owned Corporations; McDiarmid, Government Corporations and Federal Funds; Field, *Government Corporations: A Proposal* (1935) 48 HARV. L. REV. 775; McIntyre *Government Corporations as Administrative Agencies: An Approach* (1936) 4 GEO. WASH. L. REV. 161.

[3] The American Legion, 41 Stat. 284, 285; Foreign Banking Corporations, 41 Stat. 378, 379; China Trade Act Corporation, 42 Stat. 849, 851; Belleau Wood Memorial Association, 42 Stat. 1441; Federal Intermediate Credit Banks, 42 Stat. 1454, 1455; National Agricultural Credit Corporations, 42 Stat. 1454, 1462; The Grand Army of the Republic, 43 Stat. 358, 359; Inland Waterways Corporation, 43 Stat. 360, 362; The United States Blind

opinion which has brought governmental immunity from suit into disfavor, partly it reveals a definite attitude on the part of Congress which should be given hospitable scope.[4] It is noteworthy that the oldest surviving government corporation—the Smithsonian Institution—has several times been in the law courts, even in the absence of explicit authority and although the general feeling regarding governmental immunity was very different in 1846 from what it has become in our own day. 9 Stat. 102. *Smithsonian Institute* v. *Meech*, 169 U. S. 398; *Smithsonian Institute* v. *St. John*, 214 U. S. 19.

Only two instances have been brought to the Court's attention in which Congress has not explicitly rendered its recent corporate creations amenable to suit. These are the Regionals and the Fed-

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Veterans of the World War, 43 Stat. 535, 536; American War Mothers, 43 Stat. 966, 967; Textile Foundation, 46 Stat. 539, 540; Reconstruction Finance Corporation, 47 Stat. 5, 6; Disabled American Veterans of the World War, 47 Stat. 320, 321; Federal Home Loan Bank, 47 Stat. 725, 735; Tennessee Valley Authority, 48 Stat. 58, 60; Corporation of Foreign Security Holders, 48 Stat. 92, 93; Home Owners' Loan Corporation, 48 Stat. 128, 129; Federal Deposit Insurance Corporation, 48 Stat. 162, 172; Production Credit Corporations, Production Credit Associations, Central Bank for Cooperatives, Regional Banks for Cooperatives, 48 Stat. 257, 266; Federal Farm Mortgage Corporations, 48 Stat. 344, 345; Cairo Bridge Commission, 48 Stat. 575, 581; Port Arthur Bridge Commission, 48 Stat. 1008, 1009; Federal Credit Union, 48 Stat. 1216, 1218; Federal Savings & Loan Insurance Corporation, 48 Stat. 1246, 1256; National Mortgage Associations, 48 Stat. 1246, 1253; American National Theater and Academy, 49 Stat. 457, 458; Federal Housing Administrator, 49 Stat. 684, 722; Veterans of Foreign Wars of the United States, 49 Stat. 1390, 1391; Disaster Loan Corporation, 50 Stat. 19; Farmers' Home Corporation, 50 Stat. 527; Marine Corps League, 50 Stat. 558, 559; Owensboro Bridge Commission, 50 Stat. 640, 645; Southeastern University, 50 Stat. 697, 698; American Chemical Society, 50 Stat. 798, 799, 800 (semble); United States Housing Authority, 50 Stat. 888, 889, 890; Federal Crop Insurance Corporation, 52 Stat. 72, 73; Niagara Falls Bridge Commission, 52 Stat. 767, 770.

This list does not include, of course, the government corporations chartered under general state or District of Columbia incorporation laws. Sloan Shipyards v. U. S. Fleet Corp., *supra*.

[4] Mr. Justice Holmes, on Circuit, gave pioneer expression to inferences to be drawn from legislative policy. "A statute," he wrote in Johnson v. United States, 163 Fed. 30, 32 (C. C. A. 1st), "may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before." See also, Taft, C. J., in United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 385-389; Sutherland, J., in Funk v. United States, 290 U. S. 371, 381; Cardozo, J., in Van Beeck v. Sabine Towing Co., 300 U. S. 342, 350-351; Lord Birkenhead, L. C., in Bourne v. Keane [1919] A. C. 815, 830; Landis, *Statutes and the Sources of Law*, Harvard Legal Essays, p. 213.

> Stone, The Common Law in the United States (1936) 50 Hav. L. Rev. 4, 13.

eral Savings and Loan Associations. 48 Stat. 128, 132-134. It is significant that neither of these classes of corporations was the direct emanation of Congress or the offspring of a general incorporation law under Congressional authority. *Sloan Shipyards* v. *U. S. Fleet Corp., supra.* Each was to come into being through an organ that had theretofore been created by Congress. We put the Federal Savings and Loan Associations to one side, because they are not now before the Court.[5] But the circumstances attending the origination of Regional make it manifest that it was within the considerations that have uniformly led Congress to make its immediate corporate creatures subject to suit. The genesis, functions, and affiliations of Regional all negative the assumption that in its operations it was to be without the law.

Reconstruction is the parent of Regional. When creating it, Congress gave Reconstruction various general corporate powers including authority "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, state or federal." 47 Stat. 5, 6. When later Congress authorized Reconstruction to create these Regional Agricultural Credit Corporations, it did so by outlining in a single section of a comprehensive statute the broad scope of this added power for Reconstruction. 47 Stat. 709, 713.[6] Congress naturally assumed that the general corporate powers to which it had given particularity in the original statute establishing Reconstruction would flow automatically to the Regionals from the source of their being. Such, certainly, has been the practical construction of the Regional Agricultural Credit Corporations in the instinctive pursuit of their enterprise. See, e. g., *Hallenbeck* v. *Regional Agricultural Credit Corporation,* 47 Ariz. 477; *Regional Agricultural Credit Corporation* v. *Elston, Prince & McDade,* 183 So. 91 (La.). Cf. *Lewis* v. *Regional Agricultural Credit Corporation,* 92 F. (2d) 1008 (C. C. A. 10th). To imply for Regionals a unique legal position compared with those corporations to whose purposes Regional is so closely allied,[7] is to infer Congressional idiosyncrasy. There is a

[5] It is to be noted that the progenitor of these Associations—the Federal Home Loan Bank Board—is not itself a corporation. But see Sloan Shipyards v. U. S. Fleet Corp., *supra,* in which the Fleet Corporation was found subject to suit although Congress authorized its creation through the President.

[6] Section 201(e) of the statute, providing for Regional Agricultural Credit Corporations, covers less than half a page of a fifteen-page statute.

[7] See, e. g., Federal Land Banks, 39 Stat. 360, 363; Joint Stock Land Banks, 39 Stat. 360, 374; Federal Intermediate Credit Banks, 42 Stat. 1454, 1455; National Agricultural Credit Corporations, 42 Stat. 1454, 1462; Production Credit Corporations, Production Credit Associations, Central Bank

much more sensible explanation for the failure of Congress to bring Regional by express terms within its emphatic practice not to confer sovereign immunity upon these government corporations. Congress had a right to assume that the characteristic energies for corporate enterprise with which a few months previously it had endowed Reconstruction would now radiate through Reconstruction to Regional.

To give Regional an immunity denied to more than two score corporations, each designed for a purpose of government not relevantly different from that which occasioned the creation of Regional, is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none. A fair judgment of the statute in its entire setting relieves us from making such an imputation of caprice.

The legal position of Regional is, therefore, the same as though Congress had expressly empowered it "to sue and be sued." The scope of this liability remains to be explored.

Regional claims immunity in any event because Congress has not subjected it to suit "in tort". It is assumed that the present action is not one upon a contract, express or implied, and, therefore, outside the purview of "to sue and be sued." The premise is not valid, nor does the conclusion follow.

The transaction which gave rise to the controversy was a bailment of livestock for hire, and the cause of action lack of reasonable diligence by the bailee. Ever since the fifteenth century, according to Maitland, there were "actions against bailees for negligence in the custody of goods intrusted to them, and here also it was necessary to allege an assumpsit"—the having undertaken to do something. Maitland, Equity, Lecture VI, pp. 362, 363; Maitland, The Forms of Action at Common Law, Lecture VI, pp. 68, 69. That Regional's failure properly to feed and water the livestock entrusted to it by the cattle-feeding contract was not a wrong dissociated from carrying out the very transaction which brought it into existence, is evident from the recognized liability of the United States itself as lessee and bailee even under the

for Cooperatives, Regional Banks for Cooperatives, 48 Stat. 257, 266; Federal Farm Mortgage Corporations, 48 Stat. 344, 345; National Mortgage Associations, 48 Stat. 1246, 1253. Congress itself recognized the identity of purpose in these various corporations. 48 Stat. 267, 268. Note, too, hat Production Credit Corporations, successors to Regional Agricultural Credit Corporations, are subject to suit. 48 Stat. 257, 266.

explicit restrictions of the Court of Claims Acts.[8] Both this Court and the Court of Claims have sustained actions not dissimilar from the present. They have recognized that the breach of implied duty of a lessee "not to commit waste, or suffer it to be committed," *United States* v. *Bostwick*, 94 U. S. 53, 68, and of a bailee not to neglect "to exercise ordinary care and skill," *Gulf Transit Co.* v. *United States*, 43 Ct. Cl. 183, 199, are duties that have their source in contract even though the guilty agents may be merely tort-feasors. To be sure, the common law fiction of waiving the tort and suing in assumpsit cannot be used as an evasion of the limited liability created by the Court of Claims Acts. *Bigby* v. *United States*, 188 U. S. 400; *United States* v. *Minn. Investment Co.*, 271 U. S. 212, 217. But where the wrong really derives from an undertaking, to stand on the undertaking and to disregard the tort is not to invoke a fictive agreement. It merely recognizes a choice of procedural vindications open to the injured party.

To assume that Congress in subjecting these recently created governmental corporations to suit meant to enmesh them in these procedural entanglements, would do violence to Congressional purpose. When it chose to do so, Congress knew well enough how to restrict its consent to suits sounding only in contract, even with all the controversies in recondite procedural learning that this might entail. It did so with increasing particularity in the successive Court of Claims Acts. 10 Stat. 612; 24 Stat. 505; 28 U. S. C. §§ 41(20), 250(1). In the light of these statutes it ought not to be assumed that when Congress consented "to suit" without qualification, the effect is the same as though it had written "in suits on contract, express or implied, in cases not sounding in tort." No such distinction was made by Congress, and no such interpolation into statutes has been made in cases affecting government corporations incorporated under state law or that of the District of Columbia.[9] There is equally no warrant for importing such a distinction here. To do so would make application of a steadily growing policy of governmental liability contingent upon irrelevant pro-

[8] The Act of February 24, 1855 (10 Stat. 612), establishing the Court of Claims allowed suit for claims "upon any contract, express or implied . . ." The Act of March 3, 1887 (24 Stat. 505) allowed suits for claims "upon any contract, express or implied . . . or for damages, liquidated or unliquidated, in cases not sounding in tort. . . ." See 28 U. S. C. §§ 41(20), 250(1).

[9] The cases are collected in Thurston, *Government Proprietary Corporations* (1935) 21 VA. L. REV. 351, 378, *et seq.*

cedural factors. These, in our law, are still deeply rooted in historical accidents to which the expanding conceptions of public morality regarding governmental responsibility should not be subordinated.

Congress has embarked upon a generous policy of consent for suits against the government sounding in tort even where there is no element of contract. It has sanctioned suits for patent infringement, 36 Stat. 851, provided for compensation for the disability or death of a government employee "while in the performance of his duty," 39 Stat. 742, authorized payment for damage to property by the Army Air Service. 41 Stat. 169. These and other public statutes and many private bills were founded on considerations thus generalized in a Report of the Senate Committee on Claims:

"In other words, it may be said that Congress has recognized the general liability of the Government within maximum amounts for the negligence of officers and employees of the United States, but the machinery for determining that liability is defective and results in overburdening the Claims Committee of Congress and Congress itself with the consideration of tort liability claims and with injuries to the claimants.

This proposed legislation is designed to relieve the situation by utilizing the machinery of the Accounting Office and judicial branches of the Government in the assistance of Congress." Senate Report No. 1699, 70th Cong., 2d Sess., p. 4. See also Senate Report No. 658, 72d Cong., 1st Sess., p. 3.

Acting on these views, Congress passed a general court of claims bill, which, however, at the close of the session failed of enactment by President Coolidge's pocket-veto. H. R. 9285, 70th Cong., 1st Sess.; 70 Cong. Rec. 4836.[10] Congress has thus clearly manifested an attitude which serves as a guide to the scope of liability implicit in the general authority it has conferred on governmental corporations to sue and be sued. We should be denying the recent trend of Congressional policy to relieve Regional from liability. This compels us to reverse the judgment of the court below.

Reversed.

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[10] That objections to the administrative features of the bill were the probable reasons for the veto is indicated by a memorandum of Attorney-General Sargent, for which see McGuire, *Tort Claims against the United States* (1931) 19 Geo. L. J. 133, 134, 135.